

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KYRIAZOS BROTHERS, LTD., AND
ITS SUCCESSOR OR ALTER EGO,
FURS BY GIORGIOS, INC.

and

Case 2--CA--22414

LOCAL 1, FUR, LEATHER AND
MACHINISTS-FURRIERS
JOINT COUNCIL, UFCWIU, AFL--CIO

April 15, 1991
SECOND SUPPLEMENTAL DECISION AND ORDER

By Members Cracraft, Reaney, and Swartz
On March 8, 1988, the National Labor Relations Board ordered ¹ the

Respondent Kyriazos Brothers, Ltd., inter alia, to make required contributions on behalf of its employees to various fringe benefit funds including the Health Plan and the Individual Account Pension Plan (IAPP) of the Fur Manufacturing Industry for losses resulting from the Respondent's failure to make those payments in violation of Section 8(a)(5) and (1) of the Act. The Board's Order was enforced by the United States Court of Appeals for the Second Circuit on June 17, 1988.²

On July 29, 1988, the Regional Director for Region 2 issued a compliance specification and notice of hearing which alleged the amounts owed to the fringe benefit funds. In addition, the specification alleged that the backpay period continued beyond June 30, 1988, in futuro, until the parties entered into a collective-bargaining agreement or reached a bona fide impasse which

¹ 288 NLRB No. 4.

² No. 88--4075.

might vary the rates. The compliance specification, which was duly served on the Respondent, directed the Respondent to file an answer within 21 days of service pursuant to the requirements of Section 102.54³ of the Board's Rules and Regulations. No answer was filed.

On August 24, 1988, the Regional Office notified the Respondent that no answer to the compliance specification had been received and that the General Counsel intended to move for summary judgment in accordance with the specification. The Respondent was given until August 31, 1988, to file an answer. No answer was received, and on November 3, 1988, the General Counsel filed with the Board a Motion for Summary Judgment.

On March 16, 1989, the Board issued a Supplemental Decision and Order⁴ requiring, inter alia, that Respondent make contributions on behalf of its employees to the various fringe benefit funds as set forth in the backpay specification. The Board's Supplemental Order was enforced by the United States Court of Appeals for the Second Circuit on September 20, 1989.⁵

On April 20, 1990, and on September 14, 1990, the Regional Director for Region 2 issued and served on Respondent Kyriazos Brothers, Ltd., and its successor or alter ego, Furs by Giorgios, Inc., a supplemental compliance specification and notice of hearing, alleging joint and several liability. The supplemental compliance specification directed the Respondent Kyriazos Brothers, Ltd. and Furs by Giorgios, Inc. to file an answer within 21 days of service pursuant to the requirements of Section 102.54 of the Board's Rules and Regulations. No answer was filed.

³ In March 1989, Sec. 102.54 was revised and renumbered as Sec. 102.56.

⁴ 293 NLRB No. 33.

⁵ No. 89--4101.

On May 18, 1990, and October 10, 1990, the Regional Office notified the Respondent Kyriazos Brothers, Ltd. and Furs by Giorgios, Inc. that no answer to the supplemental compliance specification had been received and that the General Counsel intended to move for summary judgment in accordance with the specification.

On December 26, 1990, the General Counsel filed with the Board a Motion for Summary Judgment to Supplemental Compliance Backpay Specification and Petition in Support of Motion in Accordance with the Supplemental Compliance Specification and Decision and Order, with exhibits attached. The General Counsel submits that Furs by Giorgios, Inc. is the successor or alter ego to the Respondent Kyriazos Brothers, Ltd., that the Respondent Kyriazos Brothers, Ltd. and Furs by Giorgios, Inc., have failed to file an answer to the supplemental compliance specification, and that there are no issues to be determined by a hearing before an administrative law judge.

On December 31, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. No response was filed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations state, in pertinent part:

(b) Contents of answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

On May 18, 1990, and October 10, 1990, the Regional Office notified the Respondent Kyriazos Brothers, Ltd. and Furs by Giorgios, Inc. that no answer to the supplemental compliance specification had been received and that the General Counsel intended to move for summary judgment in accordance with the specification.

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. . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.---If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent Kyriazos Brothers, Ltd. and Furs by Giorgios, Inc. have failed to file an answer to the supplemental compliance specification. Accordingly, the Board finds that the allegations in the supplemental compliance specification are true and grants the General Counsel's unopposed Motion for Summary Judgment.

Findings of Fact

Successor/Alter Ego

About April 1989, the Respondent, Kyriazos Brothers, Ltd., ceased its business operations. On April 25, 1989, George Kyriazos, formerly a principal of the Respondent, incorporated Furs by Giorgios in the State of New York. Since April 1989, Furs by Giorgios has continued to carry on the business of the Respondent, at the same location, without substantial changes in the methods of operation, customers, suppliers, or employees. Furs by Giorgios took possession of the property rented by the Respondent and the assets owned by the Respondent with complete knowledge of the underlying unfair labor practices and proceedings.

By virtue of the acts and conduct described above, we find that Respondent, Furs by Giorgios, has been at all times material the successor to, or alter ego of, Respondent Kyriazos Brothers, Ltd., within the meaning of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Kyriazos Brothers, Ltd., and its successor or alter ego, Furs by Giorgios, Inc., New York, New York, its officers, agents, successors, and assigns, shall make the required contributions on behalf of its employees to the various fringe benefit funds including the Health Fund and Individual Account Pension Plan of the Fur Manufacturing Industry as set forth in the supplemental compliance specification.

Dated, Washington, D.C. April 15, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD